

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

CORTEZ TYREE,) CASE NO.: 1:19-CV-01533
)
 Plaintiff,) JUDGE JOHN R. ADAMS
)
 v.)
) CUYAHOGA COUNTY AND OFFICERS
 CUYAHOGA COUNTY, et al.,) BAKER, CLEMENTS AND DUNN'S
) ANSWER
 Defendants.)
) (Jury demand endorsed herein)

Now come Defendants Cuyahoga County and Officers Raymond Baker, Jermaine Clements, and Kendale Dunn by and through counsel, and for their Answer to Plaintiff's Complaint submit the following:

1. Answering Paragraphs 1, 2, 3, 4, 5, 12, 18, 21, 22, 25, 26, 27, 28, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 51, 52, 54, 55, 57, 58, 59, 60, 61, 63, 64, 65, 66, 76, 78, 80, 81, 82, 84, 85, 86, 87, 88, 89, 92, 93, 94, 95, 96, 97, 98, 99, 100, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 117, 118, 119, 120, 122, 123 and 124 of Plaintiff's Complaint, Defendants deny the allegations contained therein.

2. Answering Paragraphs 6, 7, 8, 10, 14, 15, 16, 17, 19, 20, 23, 33, 45 and 70 of Plaintiff's Complaint, Defendants admit the allegations contained therein.

3. Answering Paragraphs 9, 13, 29, 46, 47, 48, 49, 50, 53, 56 and 67 of Plaintiff's Complaint, Defendants are without sufficient information or belief to form an opinion as to the truth of the allegations contained therein and therefore deny the same.

4. Answering Paragraph 11 of Plaintiff's Complaint, Defendants admit with respect to Officer Clements, not Clemens.

5. Answering Paragraph 24 of Plaintiff's Complaint, SRT officers, including Officer Clements, responded to Officer Baker's call. Officer Dunn was not involved. Defendants deny the remaining allegations in Paragraph 24 of Plaintiff's Complaint.

6. Answering Paragraph 30 of Plaintiff's Complaint, Defendants admit oleoresin capsicum spray was used on Plaintiff causing burning sensations. Defendants deny for want of information the remaining allegations in Paragraph 30.

7. Answering Paragraph 31 of Plaintiff's Complaint, Defendants admit Plaintiff was strapped in a restraint chair. Defendants deny for want of information the remaining allegations in Paragraph 31.

8. Answering Paragraph 32 of Plaintiff's Complaint, Defendants admit that Plaintiff was taken to CCCC Medical for assessment. Defendants deny the remaining allegations in Paragraph 32.

9. Answering Paragraphs 62 and 91 of Plaintiff's Complaint, Defendants aver said Paragraphs are legal conclusions and these Defendants are not required to answer the same.

10. Answering Paragraphs 68, 69, 72, 73, 74, 75, 77 and 79 of Plaintiffs' Complaint, Defendants aver that the attached documents speak for themselves and do not require an answer from these Defendants.

11. Answering Paragraph 71 of Plaintiffs' Complaint, Defendants admit that CCCC has been overcrowded. Defendants deny or deny for want of information the remaining allegations in Paragraph 71.

12. Answering Paragraphs 83, 90, 101, 116 and 121 of Plaintiff's Complaint, Defendants incorporate the preceding admissions, averments and denials as if rewritten herein.

AFFIRMATIVE DEFENSES

13. Defendants reserve the right to add any additional Affirmative Defenses as the evidence and discovery so disclose.

14. Defendants are entitled to all immunities available under federal or state law, including, but not limited to, absolute and qualified immunity.

15. At all times hereto, Defendants acted reasonably and in good faith.

16. Plaintiff has failed to exhaust available administrative remedies under federal (including the PLRA) and Ohio law.

17. Plaintiff's Complaint fails to state a cause of action for which relief may be granted against these answering Defendants.

18. Defendants state that if Plaintiff sustained any damage or injury, such damage or injury was directly or proximately caused or contributed to by the negligence of persons, including the Plaintiff, other than these answering Defendants.

19. Plaintiff's injuries and/or damages, if any, were caused by a third party over whom Defendants had no control or duty to control.

20. Plaintiff has failed to mitigate damages.

21. Any and/or all damage or injury complained of was proximately caused by intervening and/or superseding acts of persons or entities.

22. Defendants assert that some or all damages are limited by Ohio Revised Code § 2744.05.

23. Defendants are entitled to all immunities and defenses under Ohio Revised Code Ch. 2744 and all applicable sections therein.

24. Plaintiff is not entitled to recover punitive damages, prejudgment interest or post-judgment interest, or attorney fees or costs from these answering Defendants based upon his claims.

25. Plaintiff's claim for punitive damages is barred by R.C. 2744.05.

26. Plaintiff is not entitled to equitable remedies from these answering Defendants based upon his claims.

WHEREFORE, having fully answered, Defendants pray that Plaintiff's Complaint be dismissed, and that they go hence without cost or delay.

Respectfully submitted,

MICHAEL C. O'MALLEY, Prosecuting
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JURY DEMAND

Defendants Cuyahoga County and Officers Raymond Baker, Jermaine Clements, and Kendale Dunn demand a trial by jury by the maximum number of jurors permitted by law for each claim and cause of action in the Complaint.

/s/ Robert F. Cathcart